

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHRISTOPHER BRADY HOWARD,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS,

Defendants.

Case No. C07-5600 RJB/KLS

ORDER TO SHOW CAUSE

This civil rights action has been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff has been granted leave to proceed *in forma pauperis*. Before the Court for review is Plaintiff's proposed civil rights complaint in which Plaintiff names the Department of Corrections as Defendant. (Dkt. # 1). Plaintiff has brought this action under 42 U.S.C. § 1983, but appears to challenge the validity of a 2007 violations sanction which he claims has resulted in his confinement past his release date. The Court finds that Plaintiff must show cause why his complaint should not be dismissed for failure to state a claim under 42 U.S.C. § 1983.

I. DISCUSSION

In order to state a claim under 42 U.S.C. § 1983, a complaint must allege that (1) the

1 conduct complained of was committed by a person acting under color of state law and that (2) the
2 conduct deprived a person of a right, privilege, or immunity secured by the Constitution or laws of
3 the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds*,
4 *Daniels v. Williams*, 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to remedy an
5 alleged wrong only if both of these elements are present. *Haygood v. Younger*, 769 F.2d 1350,
6 1354 (9th Cir. 1985), *cert. denied*, 478 U.S. 1020 (1986).

7 A Section 1983 plaintiff must allege facts showing how individually named defendants
8 caused or personally participated in causing the harm alleged in the complaint. *Arnold v. IBM*, 637
9 F.2d 1350, 1355 (9th Cir. 1981). A defendant cannot be held liable under 42 U.S.C. § 1983 solely
10 on the basis of supervisory responsibility or position. *Monell v. New York City Dept. of Social*
11 *Services*, 436 U.S. 658, 694 n.58 (1978). A theory of *respondeat superior* is not sufficient to state a
12 § 1983 claim. *Padway v. Palches*, 665 F.2d 965 (9th Cir. 1982).

13 When a person confined by government is challenging the very fact or duration of his
14 physical imprisonment, and the relief he seeks will determine that he is or was entitled to immediate
15 release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas
16 corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). In order to recover damages for an alleged
17 unconstitutional conviction or imprisonment, or for other harm caused by actions whose
18 unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the
19 conviction or sentence has been reversed on direct appeal, expunged by executive order, declared
20 invalid by a state tribunal authorized to make such determination, or called into question by a
21 federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. *Heck v. Humphrey*, 512 U.S.
22 477, 486-87 (1994). A claim for damages bearing that relationship to a conviction or sentence that
23 has not been so invalidated is not cognizable under § 1983. *Id.*

24 Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider
25 whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction
26 or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that
27 the conviction or sentence has already been invalidated. *Id.* If the court concludes that the

1 challenge would necessarily imply the invalidity of the judgment or continuing confinement, then
2 the challenge must be brought as a petition for a writ of habeas corpus, not under § 1983.”
3 *Butterfield v. Bail*, 120 F.3d 1023, 1024 (9th Cir.1997) (*quoting Edwards v. Balisok*, 520 U.S. 641
4 (1997)).

5 In this case, Plaintiff asks that the Court grant him relief in the form of an injunction and
6 compensatory damages for the 142 days that he was confined past his release date. (Dkt. # 4, p. 4).
7 As Plaintiff is challenging his continuing confinement, then it appears his challenge must be
8 brought as a petition for a writ of habeas corpus and not as a complaint under § 1983. If Plaintiff
9 wishes to challenge the conditions of his confinement, he must set forth sufficient allegations to
10 state a claim under § 1983.

11 Plaintiff names only the Department of Corrections. Plaintiff must set forth facts describing
12 when and where and by whom he was deprived of a constitutional right relating to the terms of his
13 confinement other than being held past his release date. Plaintiff must include factual allegations
14 describing how each individual; as opposed to the Department of Corrections, caused or personally
15 participated in causing him the harm that he claims he suffered.

16 Accordingly, it is **ORDERED**:

17 1. Plaintiff shall show cause why this complaint should not be dismissed. A response is
18 due by **January 18, 2008**. If Plaintiff fails to file a response or the response shows the Plaintiff
19 cannot go forward the Court will enter a report and recommendation that the Complaint be
20 dismissed.

21 2. The Court Clerk is directed to send a copy of this Order to Plaintiff.

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23 DATED this 20th day of December, 2008.

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25 
26 Karen L. Strombom
27 United States Magistrate Judge
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